

## THE SURVEY ORDERED.

The St. Louis Mining Company Scores a Point Against the Montana Company.

Judge Hunt Grants the Petition for a Survey of the Drum Lummon.

The Salient Points of the Opinion as Handed Down Yesterday—An Appeal to Follow.

Judge Hunt handed down an opinion yesterday granting the petition of the St. Louis Mining and Milling company for a survey of the underground workings of the Drum Lummon mine. This is considered the first victory for the St. Louis company, as it is the groundwork for a big lawsuit that may follow, if, after the survey is made, it is found that the Montana company has been extracting ore from the St. Louis lode. Lawyer Cullen, counsel for the Montana company, will take an appeal to the supreme court, so it is not yet certain that the survey will be made. Judge Hunt granted the order on the ground that the testimony introduced proved that the apex of the Drum Lummon and St. Louis veins showed outcroppings on both claims and were one and the same vein. The more important points of the decision are here given, as this is a case of unusual interest to mining men:

St. Louis Mining company vs. The Montana company (limited).

This is in the nature of a special proceeding, instituted under sec. 376 of the statute of Montana, code of civil procedure.

By consent of parties oral testimony was heard and witnesses examined. The proceeding becomes of great importance when we consider that upon a decision as to the right of the St. Louis company to enter the workings of the Montana company, may ultimately be predicated a mining suit involving rights to ore bodies of incalculable value.

The questions to be passed upon by the court at this time are concisely as follows: First, Has the plaintiff any right, or interest in any lead, lode or mining claim in the possession of another; if so, what is that interest?

Second, If plaintiff has such right, is it in any lead or mining claim in defendant's possession or ownership?

Third, If both the foregoing propositions have been affirmatively proven, it is necessary, in order that plaintiff may ascertain, protest or enforce such right or interest that an inspection, examination and survey of the mines, leads or lodes in defendant's possession, be made.

And lastly, the broad question of whether, assuming the plaintiff's allegations to be all satisfactorily proven for the purpose of this proceeding, is the law which, upon which this action has been instituted and the cause heard, sound in principle and constitutional in form, or is it in violation of the constitution of the United States and repugnant to any section thereof.

The last question may be briefly examined first, for if the law is unconstitutional any proceedings had under it are necessarily invalid.

Defendant's counsel stated that he relied upon this point as his main argument. He introduced no testimony and devotes much of his brief to a learned examination of clauses and portions of the statute in question.

He asks this court to consider the constitutionality, particularly inasmuch as he doubts the right of appeal to the supreme court from any order made in a proceeding of this kind.

It is not requisite to pass now directly upon whether appeal may be made, that point was not raised as a main one, and is not essential to a decision now. I may incidentally, however, express a hope that it may be found that constitutionality of the law may ultimately be passed upon by the appellate courts, and that the case, 59 Cal., 551; and Houghton's case, 42 Cal., 36, do not interfere with their right to review this proceeding.

The brief of the learned counsel proceeds upon the theory that this statute savors of laws which deprive people of their property or of the enjoyment of their property, without notice of the proceedings or opportunities to be heard.

He treats an order, if made in this proceeding, as an infringement upon the guaranteed rights of individuals in the ownership of mining claims, and in his oral argument he drew a distinction between mining and other classes of property.

Granting that mine are unlike most property, it is difficult to see how the constitution is to be construed as affording them and their owners any protection peculiarly adapted to their location or character or value. The law cannot recognize the desirability of secrecy in the operation of a mine or the inconvenience or the delays which a mine owner may suffer where he may be a trespasser as against the bona fide rights of another mine owner, who may have a better claim and who only asks to ascertain just what he does or does not own under the law.

The decision then goes on at length reviewing the arguments and authorities, in the course of which appears this: "Let us now pass to the first and second questions, whether the plaintiff has any rights to any mining claims in the possession of another, and if so, is such in defendant's possession? To prove the allegations of the petition expert geologists were called, who testified at length and in detail as to the nature, formation and location of the various claims of defendant and the claim of plaintiff. The evidence of these experts was relied upon by plaintiff to prove that within the limits of the St. Louis claim are outcroppings on the surface which may also appear within the limits of defendant's claim, and drawn upon the maps introduced. It is conceded that the St. Louis company's claim is older than the Marble Heart, Maskelyne or Nine Hour.

Now taking the testimony of the experts as to the St. Louis outcroppings it follows, as a conclusion of law, that there are surface outcroppings from the same vein within the boundaries of two claims, the one first located necessarily carries the right to work the vein, hence the St. Louis would have the right to work this vein.

The opinion then goes on to further define the meanings of the different terms, lodes, foot walls, hanging wall, etc., and from a review of the testimony concludes that the vein in question was shown to enter the St. Louis company's. Continuing the opinion reads:

The testimony, which I have imperfectly reviewed, also shows that the workings of the defendant company are in a continuation of the same vein claimed by the St. Louis—that the defendant was working in an extension of a chute running off the Sanpou chute, within the Maskelyne, and it is admitted that the Maskelyne, Nine Hour and Marble Heart are junior in location to the St. Louis, and that defendant is in possession of said lodes. It is clear too that a survey may positively demonstrate where lies the continuous wall and whether the tunnels driven by defendant are parallel, and such a survey alone would settle the question of whether the hanging wall is the same in both claims in dispute. It is also shown to that the vein or lode that defendant works upon is one whose apex is found inside of the surface lines of the St. Louis, extended vertically, and if this be true the right would belong to plaintiff to follow the vein, though in extending

downward, it may depart from a perpendicular and extend laterally outside of the vertical lines of such surface location. And I, therefore, conclude that an accurate technical survey is requisite in order to ascertain whether plaintiff's rights, if any they may have after such survey is made, can be enforced and protected in further proceedings.

Something for the ladies. Chatelaine watches are now worn in snake-skin wristlets. On sale only at J. Steinmetz Jewelry Company's.

A pair of diamond ear drops for \$25; a fine pair for \$50 and up at the J. Steinmetz Jewelry Company's.

DISTRICT COURT RECORD.

Judge Hunt Disposed of the Following Business Yesterday.

4925—St. Louis Mining and Milling company vs. the Montana company (limited), petition granted.

4924—Jos. E. Hlabon et al vs. B. Schans, attachment; by leave of court the name of I. Israel was inserted in the application for appointment of receiver. Court also appointed T. H. Kleinschmidt as trustee and receivers bond in \$5,000 approved and sheriff ordered to deliver stock to Sam Alexander, receiver.

4928—Thomas Gilchrist et al vs. Lydia J. English et al; by consent of counsel certain witnesses were permitted to testify. Christian Zabel vs. Brass Bros.; motion of witness to set aside and vacate judgment. Stay of proceedings granted.

State vs. James Dolan; grand larceny; demurrer of defendant overruled upon information taken by counsel, exception taken by defendant.

4143—Thomas J. Fisher vs. Catherine McGroarty; appeal; motion for judgment on the pleadings submitted without argument and taken under advisement.

4357—Carl Kleinschmidt et al vs. R. H. Kleinschmidt et al; to redeem mortgage; on trial.

Marriage licenses were issued to E. W. Knight, Jr., and Eudora W. Flowerree and Wm. Wallace, Jr. and E. A. Flowerree.

Portland.

Just received carload Portland & Swell cutters, finest in the land.

A. J. Davidson & Co.

Go to The Bee Hive and see the beautiful life-like pictures, The Battle of Waterloo and the Battle of Trafalgar.

NOTARY SEALS—New ones made and old ones changed. C. E. Kemp, Helena, Mont.

PERSONAL.

S. V. Trent, of Salt Lake, is in town.

Charles Anceny, the cattleman, is in the city.

Ex-Police Judge L. J. Hamilton, of Butte, is in the city.

William P. Gwin, an old time citizen of Butte, is in the city.

Dr. Allen and J. W. Opp, of Philipsburg, are at the Cosmopolitan.

J. B. McManis, of Deer Lodge, is domiciled at the Cosmopolitan.

A. Fred Wey and "Billy" McDermott, of Butte, are at the Cosmopolitan.

J. H. Conrad, of Billings, is in the city and staying at the Cosmopolitan.

Geo. Fowler left for Boston yesterday via the Northern Pacific and Soo line.

Captain James H. Mills returned yesterday from the St. Louis silver convention.

Mrs. Smart departed for Palmer, Mass., yesterday, after an extended visit to her daughter, Mrs. Fred Tibbets.

C. W. Willis, for Paris, Mo., and Jos. W. Wetz for Indianapolis, were passengers on the Northern Pacific out of Helena yesterday.

David Borum, a mining man from Yellowstone county, eighteen miles from Cooke City, is spending a few days in Helena.

Gen. Chas. S. Warren is over from Butte and brings the information that yesterday a tender of \$1.50 per share for 60,000 shares of Iron Mountain stock was made in Butte.

Col. John Doyle, an old-time miner of Butte, is in the city. His name is being used by Butte mining men in connection with the appointment for mine inspector.

Captain L. F. Wyman came over from Butte yesterday and is receiving the congratulations of his friends over his appointment as deputy internal revenue collector.

Dr. C. P. Hough, a prominent physician of Butte, is in town and has a desire to share the experience of his professional brother, Dr. Johnston, at the Broadwater plume.

J. Henry Longmaid, superintendent of the Carlisle Mining company of New Mexico, is in the city. Mr. Longmaid at one time had charge of one of the Drum Lummon quartz mills.

Dr. E. R. Carpenter returned from a five weeks' visit to the country. While absent the doctor has been suffering with a well defined carbuncle on his neck, but he has now nearly recovered.

Hon. W. A. Clark came over from Butte yesterday. Hearty welcome was accorded him by members of the Colorado Mining and Smelting company, who have been guests of Mr. Clark in Butte for the past few days, will join him to-day in this city.

George R. Davis, more familiarly known as "Crow" Davis, is registered at the Grand Central. Mr. Davis has for years associated with the Crow Indians, and is considered the most proficient "crow" talker on the Yellowstone. He and his family have taken land in severally on the reservation, and have a patent over 1,000 acres of magnificent land at the junction of the Clarke's Fork and Yellowstone rivers. Mr. Davis is one of the leading Red Men of Montana, having taken the thirty-second degree of that order.

A full and complete line of McLaughlin's Christmas goods, consisting of games, blocks and children's books just opened at The Bee Hive.

Herbert Nicholson & Co. are now prepared to deliver fire dry wood in any quantity. Telephone 214. Office opposite N. P. freight depot.

For bargains in crockery, glassware and lamps go to The Bee Hive.

JOTTINGS ABOUT TOWN.

Moses Morris yesterday purchased the Turner residence at the corner of Eighth avenue and Ewing street, which is now occupied by L. H. Hersfield and family.

The board of directors of the Working Women's Home will hold a monthly meeting at Mrs. Hilman's residence on Rodney street this afternoon at 2:30 o'clock. Important business will be transacted.

A rate of one and one-fifth fare for the round trip, to apply locally within a distance of 200 miles, has been made by the Union Pacific railway for the Christmas and New Year holidays, tickets to be sold Dec. 24, 25 and 31, 1889, and Jan. 1, 1890. The final limit is Jan. 3, 1890.

Bell's Broadway Photo. Gallery.

Shadow and scroll cabinets. Babies and children a specialty. Bell's gallery, Broadway, opposite Merchants hotel.

Immense line of dolls, consisting of bisque, wax, kid body, washable, rag, wool, rubber, etc., just received at The Bee Hive.

Children's tea sets in great variety at The Bee Hive.

A full line of hair ornaments in the latest novelties just received at The Bee Hive.

If you want to skate go to The Bee Hive and buy a pair of skates.

New Crop Messina Lemons.

A car of the above just received, also a large consignment of new figs, dates and nuts.

Lindsay & Co.

## THE POLITICAL SITUATION

The State Without a Legislature and Supreme Court and Silver Bow Has Two Courts.

A Discussion of the Situation by a Republican and a Democrat.

A Clear and Concise Statement Made by Representatives of the Two Great Parties.

The political situation yesterday resolved itself into this question, heard many times during the day: "Well, isn't this a pretty state of affairs?" Republicans and democrats were grouped in the hotel lobbies and calmly reviewed the situation, and the result was that the democrat talked his republican friend to a standstill on the score of logical argument. Silver Bow county is suffering the most over the completion, as the wheels of justice are effectively blocked. A reporter heard one of these conversations yesterday, which ran about as follows: Rep. "How is this judgeship muddle going to be settled. It is doing more harm in Silver Bow than any of the complications that have arisen. The case cannot be decided unless it is taken to the supreme court, and a supreme court we haven't got. We have the judges, but there is no lawful provision as to when they should begin holding court; that is left to the legislature and a legislature we haven't got, either, and there is no likelihood of having a legislative session very soon, and we also have two sheriffs in that county. If one of the judges steps down and out that will not make the other man the judge, as one or the other is judge now. I know Hamilton would quit were it not that his action would establish a precedent for the five republicans who hold state canvassing board certificates, which are prima facie evidence of right to seats in the legislature. What the returns were doesn't cut any figure. And, again, referring to the Silver Bow sherriff muddle, if you will look up the records you will find that Judge DeWolfe's argument before Judge McCallum was based solely upon the mandate to count the vote for Judge McCallum as a precedent for the legislative candidates and none other. Upon this basis the alternative writ was granted and the vote on legislative members and judgeship alone was counted and the vote for all other candidates remained in the same position as they were left by the Silver Bow canvassing board, so I can't see how we are going to set the it. It is a matter of vital importance to the people of that county that this muddle should be settled."

Dem.—"My dear sir, all your talk brings us back to the origin of the great stand which your party would like to make. Can you conscientiously say that Judge McCallum and the five democratic members of the legislature did not receive a majority of the votes cast at precinct 347? No, you can't. Have you or your party at any time done anything more than allege fraud at that voting place? No. Did you not have abundant opportunity to set forth your claims for fraud at the Butte hearing before Judge DeWolfe and did your party embrace the opportunity, and if not, why not? Were not the duties of your county canvassing board simply ministerial and clerical, and did they not usurp an extraordinary authority in deliberately throwing out the returns of that precinct? And did they throw them out because they were fraudulent? No, they found some slight fault with the manner in which the poll book was signed by their republican clerks and judges at the precinct? Did they not disobey the mandate of the Butte court when ordered to count the returns until a deputy sheriff went after one of the board and forced him to obey the court order? and did not your state returning board, the arch-conspirators, ignore and insult Judge DeWolfe's court by refusing to count the returns of the disputed precinct after the court ordered them included, and did not those three state stealers bring in a prepared document which had been cooked up at midnight, lay it upon a desk and immediately adjourn without giving anyone an opportunity to serve a writ of mandamus upon them? Were the duties of that state board any different in character from those of the county boards? No; then by what process of law could they go behind the returns. They had the full vote signed by them and it was their duty to count it; but did they do their duty? No; they disobeyed the law. You say the state constitution gave the state canvassing board the right to canvass votes and declare the result. Granted, but why in thunderation did they not perform that duty? You know well why they did not; they were in with the full vote signed by never carry it out; not in a thousand years!"

This conversation was listened to by an attentive crowd before it was ended, and the justice of the democratic cause is plain to all, but the fact remains that Silver Bow is without a court, the state is without its supreme court and the first state legislative assembly, which has so much important work before it, is still unorganized.

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JOHN T. MURPHY & Co.'s.

Buy your Christmas presents at The Bee Hive. They can suit the young and old.

Christmas and New Year cards are all the latest novelties just opened at The Bee Hive.

The swimming bath at Hotel Broadwater will be ready for bathers by Thursday morning. The lot on the lake is being cleared of snow and will be flooded, making fine skating. No charge for skaters. A toboggan slide will be erected on the grounds at once.

For useful and ornamental presents for all at extremely low prices, call at the J. Steinmetz Jewelry Company's.

It don't cost you anything to drop in and inspect the elegant Holiday goods at the J. Steinmetz Jewelry Company's. Always a hearty welcome.

Choice pieces of cut crystal and fine pottery at remarkably low prices at the J. Steinmetz Jewelry Company's.

An elegant ladies gold watch and chain for \$25 and upwards at the J. Steinmetz Jewelry Company's.

Sterling silver and plated ware at prices never before quoted in Montana at the J. Steinmetz Jewelry Company's.

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Diseases of women a specialty. Sixth avenue and Main street.

Bell's Cabinets \$3 Per Dozen.

Cabinet photos \$3 per dozen at Bell's gallery, Helena avenue, corner Warren, on our line.

Ladies should call at Fred Gamers' and get a pair of slippers, as he is selling them at a very low figure.

Ladies, Fred Gamers' is at present the best dress ever shown in this town for \$3.75.

25 Per Cent Discount.

On all suits and trappings for thirty days only.

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Removed.

Pope & O'Connor have removed their stock of drugs and assayer's material to the elegant store-room in the Bailey block, where they will have more room to attend to the wants of their customers and the re-

quirements of their increasing trade. Give them a call in their new store.

HELENA IN BRIEF.

G. W. Jackson, music dealer. Dinner from 12 to 5 at the Bon Ton. James W. Barker, merchant tailor, Main street, opposite First National bank.

Go east via the Montana Central and Manitoba railways, the new sleeping and dining car route to St. Paul and the east. Through trains leave Helena daily at 11:35 a. m.

SEE THE

President's Message

AND THE

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SEE OUR \$2,000 DIAMOND NECKLACE

Our Assortment of Holiday Goods is now Complete and Consists of the Most Unique Designs, Carefully Selected as to Quality and Workmanship, which is the VERY BEST.

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HANDKERCHIEFS:

Direct Importations of Japanese Silk Handkerchiefs, Embroidered Initials, Fancy Borders—Choice Goods.

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200 dozen Choice Christmas Ties Just Received, in all the New Styles and Shades.

SUSPENDERS.

Elegant Embroidered Brocade Satins and Fancy Silks for the Holidays.

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Of All Kinds for Both Ladies and Gentlemen. Select your goods early. We will lay them away until Christmas.

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